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Shelli Weisberg, Legislative Director
sweisberg@aclumich.org; 248-535-7112

SB 1027

The Michigan sex offender registry is the fourth largest in the country and has grown in scope and breadth of consequences over the last two decades. With over 40,000 listed offenders and 2000 new listings every year, Michigan's registry affects a growing number of people regardless of their offense, their rehabilitation status, and their risk of re-offense. However, sex offender registries have been operational for almost twenty years and we have yet to have a comprehensive review of the effect on victimization, crime, and recidivism.

Unlike criminal law in general, where crime rates and responses to criminal activity might lead to evaluations and intellectual policy responses, sex offender laws were passed quickly, in response to one or two well-publicized and usually gruesome incidents. Additionally, federal laws, motivated by these same events, required states to pass registration and notification laws leaving states with little discretion as to substance and none as to certain listing requirements, such as a tiering system that does not consider individual risk or dangerousness.

Michigan proceeded from having basic registration laws in the 1990's to permissive community notification and finally full public internet access in the early 2000's. Over the past decade, registration requirements have increased in frequency and in the amount of information required, from home address to now requiring work address, vehicle information, email and social media identifiers, and phone numbers used. At the same time, lawmakers increasingly applied restrictions to the universe of listed sex offenders as a whole, including prohibitions on working in certain industries (nursing homes and schools) and applying distance restrictions on where a listed offender could legally live, work and simply be. At each of these stages, the state applied the registration and notification laws retroactively, which has contributed to Michigan consistently being among the top four largest and broadest (by inclusion of crimes) registries in the country. Michigan's registry initially included juveniles as young as nine years old, and due to

changes in 2011 in order to comply with the federal Sex Offender and Notification Act (SORNA), shepherded by the Senate Judiciary Chair Senator Rick Jones, most – but not all – of our juvenile offenders are on a private law-enforcement only registry. It is important to note that even though on a non-public registry, juvenile registrants face the very same restrictions as adult registrants.

In fact, numerous studies over the years demonstrate that sex offender registries do not increase public safety. We know that re-offense rates vary among different types of sex offenders and are related to specific characteristics of the offender and the offense.ⁱ But the evidence consistently show that recidivism rates for sex offenders are among the lowest for all criminal offenses - averaging 3.3 percent for a sex crime.ⁱⁱ There are many long-term follow-up studies available. The leading research on this subject includes a meta-analysis combining 21 studies that followed nearly 8,000 offenders for between 8 and 31 years and examined different risk populations. This study showed that even the highest risk offender who is offense-free for at least 16 years had a zero recidivism rate.ⁱⁱⁱ About 97.5% of registrants NOT classified as high risk are offense free after five years and 95% are still offense free after 15 years.

Importantly, there is little evidence that notification laws (as opposed to registration laws) reduced crime by lowering recidivism—the estimated effect is actually weaker when a large number of offenders are on the registry. For instance, we know that a small registry (under 16 per 10,000) has the effect of reducing new crimes but no effect on recidivism (for all crimes). However, when you add public notification and an expanding registry, the effect is to increase slightly new crimes and increase recidivism over-all for all crimes.

Studies show that to the extent registration laws have reduced sex offenses, the drop in the overall frequency of reported sex offenses is due primarily to reductions in attacks against “local” victims who are known to an offender (i.e., a family member, friend, acquaintance, or neighbor).^{iv} Sex offenses by strangers, which account for 10% of all sex abuse cases,^v appear unaffected by registration laws.

Recidivism rates for those convicted on sex-related crimes do not change based on a duty to register, but recidivism rates for registered offenders for non-sex crimes is higher,^{vi} very often due to registrants failing to navigate the continuous new legal restrictions placed on them.

Over the years, little justification has been offered for increasingly harsh collateral consequences enforced on individuals solely by their inclusion on the registry. Residency restrictions imposed here in Michigan are severe enough to exclude registrant’s from most available housing in their community, preventing them in some cases from living with their family. With no empirical evidence of harm, we passed laws to exclude registrants from specific jobs and, as a practical matter, exclude them from many more. And this proposed

legislation will further exclude an entire class of people from meaningful participation in society, based not on their risk of dangerous nor to public safety, but only because they are included on a registry that was built on fear instead of analysis; a registry that has shown to have little effect on reducing sex crimes, but a great effect on eliminating ones opportunity to rehabilitate and live as a contributing member of society.

After the 2011 SORNA update, most of Michigan's registrants went from being on the registry for 25 years to lifetime registration, with over 75% of now on for life. This begs the question: What made them suddenly more dangerous such that they needed to be monitored for life? Most people are on registries for life and we offer no mechanism for removal, even though studies and history tells us that their risk of re-offense is extremely low.

In Michigan, a registration violation – registering late or working in a buffer zone, for instance – is an automatic parole revocation. In a study of registrants in California who did return to prison, 92% were for a parole violations. Less than 1% of those re-incarcerated had committed a new sex crime.^{vii}

Concerns about public safety cannot justify policies, such as the broad restriction in SB 1027, that impose serious burdens on entire categories of individuals when at the very least more accurate assessment criteria can be established. A critical component is use of sophisticated risk assessment tools that allow us to more reliably measure the risk to reoffend.

There is little evidence to support the effectiveness of sex offender registries, either in practice or in potential. Rates of sex offense do not decline after the introduction of a registry or public access to a registry via the Internet, nor do sex offenders appear to recidivate less when released into states with registries.

The ACLU of Michigan is committed to working in this legislature and in the courts^{viii} to roll back increasingly draconian sex offender laws that, in effect, serve little or no legitimate state purpose. We urge you to reject imposing yet another baseless restriction on an entire category of people with no individual consideration and no access to due process. We further urge you to engage in a thorough study of the research in order to critically analyze the operation and effectiveness of Michigan's sex offender registry.

ⁱ Center for Sex Offender Management, a project of the Office of Justice Programs, U.S. Department of Justice [Myths and Facts about Sex Offenders]. (2000, August).

ⁱⁱ Patrick A. Langan, Erica L. Schmitt, and Matthew R. Durose, Bureau of Justice Statistics, Recidivism of Sex Offenders Released from Prison in 1994, November 2003 at 1

ⁱⁱⁱ R. Karl Hanson, Andrew J.R. Harris, Leslie Helmus, and David Thornton, *High Risk Sex Offenders may not be High Risk Forever*, 29 (15) J. OF INTERNATIONAL VIOLENCE 2792, 2792-813 (2014).

^{iv} Prescott, J. J., & Rockoff, J. E. (n.d.). Do Sex Offender Registration and Notification Laws Affect Criminal Behavior? (Working paper). January, 2010

^v USA, U.S. Dept. of Justice, SMART Office. (n.d.). Raising Awareness about Sexual Abuse: Facts and Statistics. <https://www.nsopw.gov/en-US/Education/FactsStatistics?AspxAutoDetectCookieSupport=1#perpetrators>

^{vi} Agan, A. (2007) "Sex Offender Registries: Fear without Function?" Unpublished Manuscript.

^{vii} CALIF. DEPT OF CORECTIONS AND REHABILITATION, 2014 OUTCOME: EVALUATION REPORT, 30 (July 2015), available at

http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/2014_Outcome_Evaluation_Report_7-6-2015.pdf. Another 2% of the returns were for violating sex offender registry rules such as failure to update information, while the remaining 5.3% were for committing another crime that was not a sex crime.

^{viii} Courts around the country are now looking more critically at the practical implications of sex offender registries. The Pennsylvania Supreme Court recently held that treating everyone convicted of a sex offense as a likely re-offender violates the constitutional guarantees of Due Process.

California Supreme Court held that it was unconstitutionally irrational to automatically subject every sex offender parolee in San Diego County to residency restrictions that impede their rehabilitation. The court noted that restrictions should be reasonably related to the particular situation.

In Michigan, *Doe v. Snyder*, filed in Federal District Court for the Eastern District, is awaiting a final decision from the 6th Circuit Court of Appeals. In that case, federal district court ruled that SORA's school exclusion zones are unconstitutional because the zones are not marked and there is no boundary map or parcel database to locate them; that the law criminalizes normal conduct like sitting in a park with your children, going to a parent-teacher conference at school, or renting an apartment; that SORA is unconstitutionally vague because people cannot know how, when, or if they are breaking the law and SORA is so vague that even the police don't know what is legal and what is illegal.